

REMARKS

Reconsideration of the application is respectfully requested.

I. Status of the Claims

Claim 5 is canceled without prejudice or disclaimer.

Claim 7 is added without the introduction of new matter.

Claims 1-4 and 6 are amended without the introduction of new matter.

Claims 1-4, 6 and 7 are pending.

II. Allowable Subject Matter

Claim 6 was indicated as allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, first and second paragraphs. Applicants acknowledge with appreciation the indication of allowable subject matter. Claim 6 is amended by the present response as described below to overcome the above-noted rejections. Accordingly, Applicants respectfully submit that amended claim 6 is now in condition for allowance.

New independent claim 7 is added, which includes subject matter substantially similar to allowable subject matter recited in claim 6. Accordingly, claim 7 is also allowable.

III. Objection to the Specification

The Specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. Specifically, the Examiner states that the specification fails to teach features recited in Claim 2. By the present response, claim 2 is amended to clarify subject matter

recited. Applicants submit that proper antecedent bases for features recited in amended claim 2 are provided in original and amended claim 1. Further, the Specification properly teaches the features recited in amended claim 2 at page 11, lines 9-24, and page 18, lines 12-17, for example. Accordingly, Applicants respectfully request the withdrawal of the objection to the Specification on the above-noted basis.

In addition, the Specification is amended as noted above to include the paragraph titled "Incorporation by Reference" immediately below the Title. The statement in that paragraph is supported by the Application Data Sheet filed on January 24, 2005, for example.

IV. Objection to the Claim

Claim 6 was objected to because of informalities. In response, claim 6 is amended to overcome that objection. Accordingly, Applicants respectfully request the withdrawal of the objection to claim 6 on that basis.

V. Rejections under 35 U.S.C. § 112

Claims 1-4 and 6 were rejected under 35 U.S.C. § 112, first paragraph, as based on a disclosure which is not enabling. Specifically, the Examiner states referring to page 15 in the Specification that the q-max values given for a topsheet having fibers of 2.2d/1.9d in Example 1 are not 1.1kw/m^2 or less. In this regard, Applicants recognize gross typographical errors in the Table 2 at page 15 in the Specification that a decimal point is inadvertently omitted from each of numbers indicated in cells in the columns for "Contact warm/cold feeling (q-max value)." Accordingly, the Table 2 is amended as noted above to correct those gross typographical errors. Such corrections are

supported by the Specification at page 16, lines 1-8, for example. The corrections are also supported by the original Japanese priority document, JP 2002-216077, *see* paragraph [0027], Table 2. Applicants also submit that one of ordinary skill in the art would know, referring to the Specification, that the above-noted omission of the decimal point is inadvertent and a gross typographical error.

Therefore, the rejection to claims 1-4 and 6 under 35 U.S.C. § 112, first paragraph, are overcome without the introduction of new matter. Accordingly, Applicants respectfully request the withdrawal of that rejection of claims 1-4 and 6.

Further, claims 1-6 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Specifically, the Examiner states that the meaning of the phrases including the term “warm/cool feeling” is unclear. In response, claim 1 is amended to delete the term “warm/cool feeling.” Claim 5 is canceled by the present response thereby making the rejection of claim 5 moot.

With respect to claim 6, amended claim 6 now recites, among others, features that:

using a criterion for a warm/cool feeling of the topsheet in a wet condition of the absorbent article, wherein
said criterion is indexed to a first q-max value that is a first maximum heat transfer quantity at a side in contact with skin of a wearer of the topsheet and to a second q-max value that is a second maximum heat transfer quantity at a side in contact with an absorption body of the absorbent article[.]

Support for amended claim 6 is found in the Specification at page 3, line 17 to page 4, line 19, page 8, line 17 to page 10, line 2, and page 14, the seventh line from the bottom to page 15, for example. According to the present invention recited in amended claim 6, the criterion for the warm/cool feeling of the topsheet is indexed to the first and second q-max values. Therefore, the warm/cool feeling is objectively indexed.

Accordingly, amended claim 6 including the term “warm/cool feeling” is now definite. Therefore, Applicants respectfully submit that the rejection to claims 1-4 and 6 under 35 U.S.C. § 112, second paragraph, is overcome, and request the withdrawal of that rejection.

VI. Rejections under 35 U.S.C. § 102/103

Claims 1, 3 and 4 were rejected under 35 USC §102(b) as anticipated by, or in the alternative, under 35 USC §103(a) as unpatentable over Lasko et al. (U.S. Patent Application Publication No. 2002/0090875, herein “Lasko”). Further, claims 1 and 2 were rejected under 35 USC §102(b) as anticipated by, or in the alternative, under 35 USC §103(a) as unpatentable over Raley (U.S. Patent No. 4,761,322). Additionally, claim 5 was rejected under 35 USC §103(a) as unpatentable over Fell et al. (U.S. Statutory Invention Registration No. H1969 H, herein “Fell”). Applicants respectfully traverse the rejections based on Lasko and Raley. The rejection of claim 5 is moot because claim 5 is canceled by the present response.

Independent claim 1 is directed to a topsheet with liquid permeability of an absorbent article, and amended to clarify subject matter recited. Specifically, amended claim 1 recites features, among others, that:

- a first side in contact with skin of a wearer of the topsheet;
- a second side in contact with an absorption body of the absorbent article; wherein, in a wet condition of the absorbent article,
 - the first side of the topsheet has a first q-max value, which is a first maximum heat transfer quantity, of 1.1 kw/m^2 or less; and
 - the second side of the topsheet has a second q-max value, which is a second maximum heat transfer quantity, of equal to or greater than 0.5 kw/m^2 over the first q-max value.

With respect to Lasko, the Examiner asserts in the outstanding Office Action that Applicants' claimed q-max values are "considered to be inherent in Lasko", and that "the recitation that an element is 'adapted to' perform a function is not a positive limitation but only requires the ability to so perform" and "does not constitute a limitation in any patentable sense."¹

In response, claim 1 is amended to recite positive limitations relating to structural features of the topsheet. The topsheet has structural features including the first and second sides. The first side of the topsheet has the first q-max value of 1.1 kw/m^2 or less. The second side of the topsheet has the second q-max value that is equal to or greater than 0.5 kw/m^2 over the first q-max. Although the Examiner asserts that Lasko teaches the topsheet fabric on the side in contact with the absorption body having a higher denier than that of the side in contact with the skin of the wearer, Lasko does not teach or suggest the structural features of the topsheet that the first side of the topsheet has a first q-max value of 1.1 kw/m^2 or less and that the second side of the topsheet has a second q-max value of equal to or greater than 0.5 kw/m^2 over the first q-max value, as recited in amended claim 1.

Further, even if the claimed q-max values are considered to be inherent in the invention in Lasko as the Examiner asserts, Lasko does not teach or suggest that the second side of the topsheet has a second q-max value of equal to or greater than 0.5 kw/m^2 over the first q-max value, as recited in amended claim 1.

Therefore, the present invention recited in amended claim 1 and claims 2-4 dependent therefrom are patentably distinguishable over Lasko.

With respect to Raley, similarly to the assertions with respect to Lasko, the Examiner asserts that Applicants' claimed q-max values are considered to be inherent in Raley, and that "the

¹ See the outstanding Office Action at page 4, the last line to page 5, line 8.

recitation that an element is 'adapted to' perform a function is not a positive limitation but only requires the ability to so perform" and "does not constitute a limitation in any patentable sense."²

In response, Applicants present arguments similar to those for Lasko to overcome the rejection based on Raley. Raley does not teach or suggest the structural features of the topsheet that the first side of the topsheet has a first q-max value of 1.1 kw/m² or less and that the second side of the topsheet has a second q-max value of equal to or greater than 0.5 kw/m² over the first q-max value, as recited in amended claim 1. Even if the claimed q-max values are considered to be inherent in the invention in Raley as the Examiner asserts, Raley does not teach or suggest that the second side of the topsheet has a second q-max value of equal to or greater than 0.5 kw/m² over the first q-max value, as recited in amended claim 1.

Therefore, the present invention recited in amended claim 1 and claims 2-4 dependent therefrom are patentably distinguishable over Raley.

Accordingly, Applicants respectfully request the withdrawal of the rejections of claims 1-4 based on the cited references of Lasko and Raley.

² See the outstanding Office Action at page 6, lines 4-9.

CONCLUSION

In view of the above amendments, Applicants believe the pending application is in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

The Examiner is respectfully requested to contact the undersigned at the telephone number indicated below once he has reviewed the proposed amendment if the Examiner believes any issue can be resolved through either a Supplemental Response or an Examiner's Amendment.

Dated: August 7, 2006

Respectfully submitted,

By 

Louis J. DelJudice

Registration No.: 47,522

DARBY & DARBY P.C.

P.O. Box 5257

New York, New York 10150-5257

(212) 527-7700

(212) 527-7701 (Fax)

Attorneys/Agents For Applicant